**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR**

**MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929**

**MFA.No. 683 of 2002()**
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**OPMV.1174/1993 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOLLAM**
**.....**

**APPELLANT: PETITIONER**
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**MYTHEENKUNJU, UPPOOTTITHEKKATHIL,**
**NEENDAKARA, NOW RESIDING AT MAMMOOTIL VEEDU,**
**NADUVATHUCHERRY, PANMANA, CHOVARA P.O.,KOLLAM.**

**BY ADV. SRI.B.SURESH KUMAR**
**SMT.C.G.PREETHA**
**SRI.P.R.PAVITHRAN**
**SMT.T.V.NEEMA**

**RESPONDENTS: RESPONDENTS**
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**1. THE STATE OF KERALA, REPRESENTED BY THE**
**DIRECTOR DEPARTMENT OF TOURISM,**
**PARK VIEW, THIRUVANANTHAPURAM.**

**2. K.K.DEVAPAL(M.D.L.NO.319/87 NITA),**
**GEETHA NILAYAM, KOOVALASSERI MARANALLOOR VILLAGE,**
**NEYYATTINKARA, THIRUVANANTHAPURAM DSITRICT.**

**BY ADV. SMT.M.HEMALATHA**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 09/07/2007 ALONG WITH M.A.C.A. NO.300 OF 2003, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

# K. PADMANABHAN NAIR, J.

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**M.F.A. NO. 683 OF 2002**
**AND**
**M.A.C.A. NO. 300 OF 2003**

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**Dated this the 9th day of July, 2007**

## J U D G M E N T

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These two appeals arise from an award passed by the Motor Accidents Claims Tribunal, Kollam in O.P(MV) No.1174 of 1993. Miscellaneous First Appeal No.683 of 2002 is filed by the petitioner in the O.P. and M.A.C.A. No.300 of 2003 is filed by the second respondent driver in the above stated O.P. For the sake of convenience, the parties will be referred to as arrayed in the O.P.

2. Petitioner met with an accident at about 10.15 p.m. on 14.5.1992. It was averred that petitioner was walking through the side of Kollam-Alappuzha National Highway from south to north, pushing his bicycle by one hand. When he reached near Neendakara Church, a Car bearing Reg. No.KBV-5708 came and hit on his person causing injuries. Petitioner filed the O.P. claiming compensation impleading the State, which is the owner of the Car as well as the second respondent. First respondent in the O.P. alone contested

the case. Second respondent did not appear and contest. Tribunal found that the accident occurred due to the rash or negligence of the second respondent. It also found that the petitioner is entitled to a compensation of Rs.15,000/- with 9% interest from 19.5.1993. Dissatisfied with the quantum of compensation awarded, petitioner in the O.P. filed M.F.A. No.683 of 2002. Challenging the finding that the accident occurred due to the negligence of the second respondent, he filed M.A.C.A. No.300 of 2003.

3. Learned counsel appearing for the appellant-petitioner argued that the Tribunal failed to note that the appellant sustained fracture to his 3rd and 4th meta tarsal with clavicle dislocation. It is argued that the petitioner underwent treatment as an inpatient for more than 2 months and had to spent huge amounts as treatment expenses. It is argued that the Tribunal awarded a paltry amount of Rs.1,500/- as compensation towards treatment expenses and Rs.7,000/- towards pain and suffering. It is argued that the Tribunal did not award any compensation for loss of earning, disability, etc. It is argued that the Tribunal has not

considered the matter in the proper perspective.

4. Learned counsel appearing for the second respondent has argued that the accident occurred due to the negligence of the petitioner himself and the driver of the Car was no way responsible for the accident.

5. After considering all the aspects, I am of the view that an opportunity can be given to both sides to raise their contentions before the Tribunal. For that purpose, the case has to go back.

6. In the result, the appeals are allowed in part. The award passed by the Tribunal in O.P(MV) No.1174 of 1993 is set aside. The case is remanded. Tribunal is directed to take O.P.(MV) no.1174 of 1993 back to file and dispose of the same afresh in accordance with law after giving reasonable opportunity to both sides to adduce further evidence. An opportunity shall be afforded to the second respondent driver (appellant in M.A.C.A. No.300) to file his written statement also. Amount, if any, paid by the appellant in M.A.C.A. No.300 of 2003 as a condition for maintaining the appeal shall be refunded to him.

**Parties are directed to appear before the Motor Accidents Claims Tribunal, Kollam on 10.9.2007.**

**K. PADMANABHAN NAIR, JUDGE.**

**vsv**

**K. PADMANABHAN NAIR, J.**

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**M.F.A. NO.683 OF 2002**
**AND**
**M.A.C.A. NO. 300 OF 2003**

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**J U D G M E N T**

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**9TH JULY, 2007**